



FTB Publication 776

Tax Information for Same-Sex Married Couples



INTERNET ASSISTANCE

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Purpose

This publication is primarily to assist same-sex married couples (SSMC) in filing their California income tax returns, if they have SSMC adjustments. We have also included information about the legal history of SSMC and community property that may be useful in completing the return.

SSMC adjustments may be required because the filing status of an SSMC for California purposes is not the same as the filing status that the SSMC used for federal purposes. Federal income tax law treats a single person and a married couple as a single economic unit. Frequently, the dollar limits for a single taxpayer and a married couple are the same and the dollar limit for a married person filing separately is one-half the amount for a single person or a married couple. To apply the correct dollar limits, an SSMC might be required to reduce the amount of a deduction reflected on a federal return.

Another category of adjustment occurs when the substantive rule for a transaction is different for a married person. For example, no gain or loss is recognized when spouses transfer property between themselves. Since a same-sex married individual is a spouse for California purposes, no gain or loss is recognized for California when one same-sex married individual transfers property to his or her spouse. However, this transfer is not likely to receive the same treatment for federal purposes and gain or loss may be recognized for federal purposes.

SSMC adjustments include, but are not limited to the following:

- Division of community property
- Capital losses
- Transactions between same-sex married individuals
- Sale of residence
- Dependent care assistance
- Investment interest
- Qualified residence acquisition loan & equity loan interest
- Expense depreciation property limitations
- Individual Retirement Account
- Education loan interest
- Rental real estate passive loss
- Rollover of publicly traded securities gains into specialized small business investment companies

There are three possible methods to file if you are an SSMC.

If you do not have any SSMC adjustments:

1. Combine federal Form 1040, line 37 from each individual federal Form 1040 filed with the Internal Revenue Service (IRS) and transfer the combined amount to Form 540, 540A, or 540NR (Long or Short), line 13.

If you have SSMC adjustments, you will need to recalculate your federal adjusted gross income (AGI), before completing your California income tax return. You may use either one of the following methods.

2. Complete the California SSMC Adjustments Worksheet (included in this publication).
3. Complete a pro forma federal Form 1040. A pro forma federal Form 1040 must be prepared using the same filing status you will use on your California tax return.

A pro forma federal Form 1040, is a federal return completed in the same manner that a married couple would report income and expenses.

The pro forma federal Form 1040 is used only to assist you in completing your California return. **DO NOT file the pro forma federal Form 1040 with the IRS.**

To complete the pro forma federal Form 1040 or the worksheet, follow the federal Form 1040 instructions along with the instructions provided in this publication.

General Information

In general, California law conforms to the Internal Revenue Code (IRC) as of January 2005. However, there are continuing differences between California and federal law. When California conforms to federal tax law changes, we do not always adopt all of the changes made at the federal level. For more information, go to our website at ftb.ca.gov and search for **conformity**. Additional information can be found in FTB Pub. 1001, Supplemental Guidelines to California Adjustments, the instructions for California Schedule CA (540 or 540NR), and the Business Entity tax booklets.

The instructions provided with California tax forms are a summary of California tax law and are only intended to aid taxpayers in preparing their state income tax returns. We include information that is most useful to the greatest number of taxpayers in the limited space available. It is not possible to include all requirements of the California Revenue and Taxation Code (R&TC) in the tax booklets. Taxpayers should not consider the tax booklets as authoritative law.

In general, California affords the same rights – and responsibilities – to same-sex married individuals that previously were available only to opposite-sex married individuals. For California tax purposes, the same long-standing rules applicable to opposite-sex married individuals (relating to filing status, community property income, etc.) now apply to SSMCs. However, because

the federal government does not recognize SSMCs as married individuals for federal tax purposes, SSMCs will continue to file as unmarried individuals on their federal returns.

Filing Requirements – SSMCs under California law must file their California income tax returns using either the married/RDP filing jointly or married/RDP filing separately filing status.

Legal History

HISTORY OF CALIFORNIA INCOME TAX LAW FOR SAME-SEX MARRIED COUPLES

Proposition 8 was approved by the voters on November 4, 2008, and provides that “only marriage between a man and a woman is valid or recognized in California.” The proposition was effective the day after voter approval and overturns the rule of law established by the California Supreme Court in *In re Marriage Cases*. However, the proposition is silent on its retroactivity.

The California Attorney General has stated that he believes the courts will ultimately hold that same-sex marriages performed in California after 5:00 p.m. on Monday June 16, 2008 and before November 5, 2008, are valid. The Attorney General has also stated that he will defend in court the marriages performed during this time. Accordingly, it appears that as of the time of this publication, same-sex couples married between these dates will be considered married for California purposes and they must file their California income tax returns using the married/RDP filing jointly or married/RDP filing separately filing status. Lawsuits challenging the legal effect of Proposition 8 have been filed, so same-sex couples that were married during the time period described above should follow these lawsuits since they may impact the information provided in these instructions. Any changes resulting from these lawsuits will be summarized at the time of those decisions on our website at ftb.ca.gov.

Attachments to Your Return

Did you attach any federal forms or schedules other than Schedule A, Itemized Deductions, or Schedule B, Interest and Ordinary Dividends, to your federal Form 1040?

No Do not attach a copy of your federal Form 1040 return to Form 540.

Yes Attach a copy of both spouses federal Form 1040 filed with the IRS and all supporting federal forms and schedules to Form 540.

Note: Attach a copy of either the California SSMC Adjustments Worksheet or federal pro forma Form 1040 if used to complete your Form 540.

If software prevents you from filing the required attachment(s), you should retain copies of all documentation which may be requested at a later date.

Do I Have to File a California Income Tax Return?

Filing Requirements for SSMC Residents, Nonresidents, and Part-Year Residents

Residents – File a California tax return if either your gross income (which consists of all income you received from all sources in the form of money, goods, property, and services, that is not exempt from tax) or your adjusted gross income (which consists of your federal adjusted gross income from all sources, reduced or increased by all California income adjustments) is more than the amounts shown on the chart below for your filing status, age and number of dependents.

Nonresidents and Part-Year Residents – File a California tax return if you have any income from California sources and your gross income (which consists of all income you received from all sources in the form of money, goods, property, and services, that is not exempt from tax) or adjusted gross income (which consists of your federal adjusted gross income from all sources, reduced or increased by all California income adjustments) is more than the amounts shown on the chart below for your filing status, age and number of dependents.

Note: If your gross income or adjusted gross income is less than the amounts listed on the chart, you may still have a filing requirement. For more information, get California Form 540/540A Personal Income Tax Booklet or California Form 540NR Nonresident or Part-Year Resident Income Tax Booklet.

On 12/31/08, my filing status was:	and on 12/31/08, my age was: (If your 65th birthday is on January 1, 2009, you are considered to be age 65 on December 31, 2008)	California Gross Income			California Adjusted Gross Income		
		Dependents			Dependents		
		0	1	2 or more	0	1	2 or more
Head of household (Get FTB Pub. 1540, California Head of Household Filing Status Information)	Under 65 65 or older	14,845 19,795	25,145 27,520	32,870 33,700	11,876 16,826	22,176 24,551	29,901 30,731
Married/RDP filing jointly or Married/RDP filing separately (The income of both spouses must be combined; both spouses may be required to file a tax return even if only one spouse had income over the amounts listed.)	Under 65 (both spouses) 65 or older (one spouse) 65 or older (both spouses)	29,690 34,640 39,590	39,990 42,365 47,315	47,715 48,545 53,495	23,752 28,702 33,652	34,052 36,427 41,377	41,777 42,607 47,557
Qualifying widow(er)	Under 65 65 or older		25,145 27,520	32,870 33,700		22,176 24,551	29,901 30,731
Dependent of another person Any filing status	Any age	More than your standard deduction (Use the California Standard Deduction Worksheet for Dependents in the instructions for your tax return to figure your standard deduction.)					

Filing Status

Note: If you are filing as an SSMC, be sure to fill in the circle next to the question in the Filing Status section of the tax return that asks "If your California filing status is different from your federal status, fill in the circle here."

Married/RDP Filing Jointly – If **any** of the following is true:

- You were an SSMC as of December 31, 2008, even if you did not live with your spouse at the end of 2008.
- Your spouse died in 2008 and you did not remarry or register as an RDP in 2008.
- Your spouse died in 2009 before you filed a 2008 return.

Married/RDP Filing Separately

- Community property rules apply to the division of income if you use the married/RDP filing separately status. For more information, get FTB Pub. 1031, Guidelines for Determining Resident Status, FTB Pub. 1051A, Guidelines for Married/RDP Filing Separate Returns, or FTB Pub. 1032, Tax Information for Military Personnel.
- You cannot claim a personal exemption credit for your spouse even if your spouse had no income, is not filing a return, and is not claimed as a dependent on another person's return.
- You may be able to file as head of household if your child lived with you and you lived apart from your spouse during the entire last six months of 2008.

Head of Household is for individuals who are unmarried and for certain married individuals living apart (considered unmarried) who provide a home for certain relatives. You are entitled to use the head of household filing status as a same-sex married individual only if **all** of the following apply:

- You met the requirements to be considered unmarried on December 31, 2008.
- You paid more than one-half the cost of keeping up your home for the year 2008.
- For more than half the year, your home was the main home for you and your child who lived with you.
- You were not a nonresident alien at any time during the year.

For a child to qualify as your foster child for head of household purposes, the child must either be placed with you by an authorized placement agency or by order of a court. For more information, go to our website at ftb.ca.gov and search for **hoh**, or get FTB Pub. 1540, California Head of Household Filing Status.

Qualifying Widow(er) with Dependent Child

Same-sex married individuals qualify for this filing status beginning in 2009 if all five of the following apply:

- Your spouse died in 2008 and you did not remarry or enter into a registered domestic partnership in 2009.
- You have a child, stepchild, adopted child, or foster child whom you can claim as a dependent.
- This child lived in your home for all of 2009. Temporary absences, such as for vacation or school, count as time lived in the home.
- You paid over half the cost of keeping up your home for this child.
- You could have filed a joint return with your spouse the year he or she died (2008), even if you actually did not do so.

Married/RDP Filing Separately

Division of Income – Before revising your federal adjusted gross income, you must divide your community property. The domicile of the spouse earning the income determines the division of income between the spouses when separate returns are filed. Each spouse must follow the laws of his or her state of domicile to determine if the income is separate or community property. California is a community property state. If the state of domicile is a community property state, when filing separate returns, each spouse must report half of the community property plus all separate income on his or her return. For California purposes, use federal Publication 555, Community Property, which contains an allocation worksheet to assist in the division of income.

To revise your federal adjusted gross income, have the following information available:

- Federal Income Tax Return and supporting schedules for each spouse.
- Copy of federal Form 1040 instructions including worksheets, as needed.
- If filing separately, a copy of FTB Pub. 1051A and allocation worksheet from federal Publication 555.

California Community/Separate Property

Community property is the total of the following property acquired and earnings received:

- By a spouse during a marriage while domiciled in a community property state.
- By a spouse that is not separate property.

Each spouse owns one-half of all community property.

Separate property is:

- All property owned separately by a spouse before marriage.
- All property acquired separately after marriage, such as gifts, inheritances, and property purchased with separate funds.
- Money earned while domiciled in a separate property state.
- All property declared separate property in a valid agreement entered into before or after marriage.

Community income is all income from community property, wages, salaries, and other compensation for personal services of either spouse while in a same sex marriage. Community income is divided equally between spouses.

Under California law, community status ends in any of the following situations:

- Upon the death of either spouse.
- When the decree of divorce becomes final.
- When spouses separate with no immediate intention of reconciliation.

Income from separate property is income of the spouse who owns the property.

When filing separate returns, the domicile of the spouse who earns the income determines the division of income between the spouses. For income tax purposes, the income of spouses domiciled in a community property state may be community income or separate income. When spouses file separate returns, each spouse reports the following:

- One-half of the community income
- All of his or her separate income

For more information on community property, see federal Publication 555. SSMCs will use the rules in federal Publication 555 for married people to determine how to apply those rules for California income tax purposes.

Pension Plans

For qualified pension plans, federal law will not treat a spouse in a same-sex marriage as the spouse.

Anti-alienation provisions, applicable to qualified pension plans, prohibit assignment or transfer of plan assets except through a qualified domestic relations order (QDRO) or by certain survivor benefits. A QDRO is generally a court-ordered division of a qualified pension plan between spouses in relation to a divorce, a property division, or provision for child support. Federal law does not recognize a same-sex married individual as a spouse.

IRAs/Roth IRAs/Tax-Favored Accounts

Federal law will not treat a same-sex married individual as a spouse in connection with the tax treatment of a tax-favored account, such as a Individual Retirement Account (IRA), Roth IRA, Coverdell Education Savings Account (ESA), Archer Medical Savings Account (MSA), or IRC Section 529 plan (Qualified Tuition Program).

For example, under federal law, the beneficiary of a Coverdell ESA may transfer the remaining balance in an ESA to a new beneficiary. This new beneficiary must be “a member of the family,” which is defined broadly to include the following relatives of the original beneficiary: spouse, child, brother, sister, stepbrother, stepsister, stepfather, stepmother, etc. Because federal law does not recognize a same-sex spouse, the transfer of the balance in an ESA to a taxpayer’s same-sex spouse or that spouse’s child would result in the Coverdell ESA no longer being treated as a qualified tax-favored account for federal income tax purposes. Instead, the change in beneficiary would be considered a non-qualified distribution from the tax-favored account subject to additional tax of 10 percent for federal tax purposes.

In the event of a distribution from an IRA, Roth IRA, or other tax-favored account, because federal law does not recognize same-sex marriages, a taxpayer's same-sex spouse or that spouse's child who receives distributions from the taxpayer's IRA, Roth IRA, or other tax-favored account, may incur additional tax penalties for federal income tax purposes, but not for California income tax purposes.

For example, in an IRA, if you take an early distribution from your IRA to pay the higher education expenses of your same-sex spouse or that spouse's child, for federal purposes you would probably owe an additional tax of 10 percent, but for California purposes you would not owe the additional tax of 2.5 percent. However, for both federal and California tax purposes, you would need to include in your taxable income the early distribution from your IRA, unless you have a basis in the IRA that may be recovered tax-free.

For California income tax purposes, if you or your same-sex spouse are covered by an employer-provided retirement plan, then your California deduction for an IRA contribution may be limited. See the example for line 32 in the instructions for California SSMC Adjustments Worksheet (included in this publication). The amount of a nondeductible IRA contribution creates a California-only IRA basis that is recoverable from IRA distributions that would otherwise be taxable for California income tax purposes. You must keep track of your California basis in your IRA. For general information about recovery of a California-only basis, get FTB Pub. 1005, Pension and Annuity Guidelines.

For California income tax purposes, if you or your same-sex spouse contributed to a Roth IRA in 2008 that was valid for federal tax purposes, it may be considered an "excess" contribution under California law. However, California does not impose the six percent excise tax that is imposed under federal law on excess contributions to Roth IRAs.

Related Parties

In applying the IRC for California purposes:

- The definition of related parties includes SSMCs. (IRC Section 267)
- The definition of spouse includes spouses in a same-sex marriage. Therefore, no gain or loss will be allowed for any transfer of property between spouses in a same-sex marriage. (IRC Section 1041)
- A same-sex spouse will be treated as a spouse for purposes of determining ownership of stock. However, the same-sex spouse will not be recognized as a spouse for federal purpose. This different treatment may affect the classification of certain business entities. (IRC Section 318)

Frequently Asked Questions

(Go to our website at ftb.ca.gov for more frequently asked questions)

1. Can I file a joint California return with my spouse of a same-sex marriage for tax years prior to 2008?

No. Same-sex married individuals **cannot** file a married filing joint or married filing separate return for tax years prior to 2008. A same-sex married person is required to use the same filing status for state income tax purposes that was used or would have been used for federal income tax purposes. If you entered into a same-sex marriage on or after June 16, 2008, and you are still legally married as of December 31, 2008, you are required to use the married/RDP filing jointly or married/RDP filing separately filing status.

2. Will community property be applied to the earned income of a spouse in a same-sex marriage for California tax purposes?

Yes, pursuant to California family law, community property applies to the earned income of a spouse domiciled in California, including a spouse in a same-sex marriage recognized as a valid marriage in California, pursuant to the California Supreme Court's holding in *In re Marriage Cases*.

3. If one spouse in a same-sex marriage dies, can the surviving spouse file a joint return?

Yes, beginning with the 2008 tax year, if one spouse dies, the surviving spouse can file as married/RDP filing jointly for the year the spouse dies if he or she does not enter into a new marriage or a registered domestic partnership. If a spouse dies in the following year prior to filing their return, the surviving spouse can file a married/RDP filing jointly return. For more information on deceased taxpayers, go to our website at ftb.ca.gov and search for **deceased taxpayer**.

4. Can the FTB waive accuracy-related penalties for SSMCs due to reasonable cause?

Yes, but there are no special rules to grant waiver of penalties for SSMCs. "Reasonable cause" is a standard exception to most penalties imposed under the California Revenue and Taxation Code and the federal Internal Revenue Code. Generally, reasonable cause exists where the failure to comply occurs despite the exercise of ordinary business care and prudence.

5. How have the mortgage interest rules changed for SSMCs?

The limitations applicable to the deductibility of mortgage interest for married individuals may limit your interest deduction on your California return. For more information about those limits see federal Publication 936, Home Mortgage Interest Deduction.

6. Can a spouse in a same-sex marriage who files a California married filing jointly return exclude up to \$500,000 of capital gain on the sale of a principal residence?

Yes, if they meet the capital gain exclusion rules that apply to a married individual filing a joint return. For more information, see federal Publication 523, Selling Your Home.

7. Can a spouse in a same-sex marriage who filed a joint return apply for relief under California's innocent spouse provisions?

Yes, California innocent spouse provisions apply to anyone who files a joint return.

For more information, see form FTB 705, Request for Innocent Spouse Relief Form and Brochure.

8. If a same-sex married couple obtains a divorce and a California Family Law Court awards spousal support (alimony), what is the tax treatment of these payments?

If the payments satisfy the requirements under tax law for alimony, they would be deducted by the payor and included by the payee. However, federal treatment of these payments is uncertain.

9. If a court in a divorce proceeding for a same-sex marriage assigns a tax debt owing to the FTB to one of the spouses, is the FTB bound by the court order?

The parties to a divorce can stipulate to any payment arrangement of taxes that they wish, and the court could order one party to satisfy outstanding tax liabilities. However, the FTB is not generally bound by such a court order. There are some circumstances where the FTB will follow a court order revising tax liability between the parties to a divorce proceeding. For more information, see form FTB 705.

10. Can a spouse in a same-sex marriage file as "head of household" (HOH) on a California return?

Yes, a spouse of a same-sex marriage can file HOH on a California return if the spouse maintains the main home for their birth child, stepchild, adopted child, or eligible foster child and is "considered unmarried."

To be "considered unmarried" you must meet **all** of the following requirements:

- Your spouse did not live in your home during the last six months of the tax year.
- You file a separate return.
- You pay more than half the cost of keeping up your home for the tax year.
- Your home was the main home of your birth child, stepchild, adopted child, or eligible foster child for more than half the year.
- You must be able to claim an exemption for the child.

For more information on filing HOH get FTB Pub. 1540, California Head of Household Filing Status.

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visit our website:

ftb.ca.gov

Instructions for California SSMC Adjustments Worksheet – Recalculated Federal Adjusted Gross Income

References to these instructions are to the Internal Revenue Code (IRC) as of **January 1, 2005**.

General Information

In general, California law conforms to the Internal Revenue Code (IRC) as of January 2005. However, there are continuing differences between California and federal law. When California conforms to federal tax law changes, we do not always adopt all of the changes made at the federal level. For more information, go to our website at ftb.ca.gov and search for **conformity**. Additional information can be found in FTB Pub. 1001, Supplemental Guidelines to California Adjustments, the instructions for California Schedule CA (540 or 540NR), and the Business Entity tax booklets.

The instructions provided with California tax forms are a summary of California tax law and are only intended to aid taxpayers in preparing their state income tax returns. We include information that is most useful to the greatest number of taxpayers in the limited space available. It is not possible to include all requirements of the California Revenue and Taxation Code (R&TC) in the tax booklets. Taxpayers should not consider the tax booklets as authoritative law.

Purpose

Same-sex married couples (SSMC) may use the California SSMC Adjustments Worksheet or a pro forma federal Form 1040 to make SSMC adjustments to calculate federal adjusted gross income (AGI) for California tax purposes.

To complete this worksheet, have the following information available:

- Federal Income Tax Return and supporting schedules for each spouse.
- Copy of federal Form 1040 Instructions including worksheets, as needed.
- If filing separately, a copy of federal Publication 555.
- If filing separately, a copy of FTB Pub. 1051A.

SSMCs who file a California tax return and have no SSMC adjustments between federal and California do not need to complete this worksheet. If you do not have any SSMC adjustments, combine the amount on line 37 from each spouse's individual federal Form 1040 filed with the IRS and transfer the combined amount to Form 540, 540A, or 540NR (Long or Short), line 13.

SSMC adjustments include but are not limited to the following:

- Division of community property
- Capital losses
- Transactions between spouses of a same-sex marriage
- Sale of residence
- Dependent care assistance
- Investment interest
- Qualified residence acquisition loan & equity loan interest

- Expense depreciation property limitations
- Individual Retirement Account
- Education loan interest
- Rental real estate passive loss
- Rollover of publicly traded securities gain into specialized small business investment companies

SSMCs filing as married/RDP filing jointly, or married/RDP filing separately, and former SSMCs filing single with SSMC adjustments will complete a pro forma federal Form 1040 using the same filing status as their California tax return or use this worksheet and instructions.

SSMC adjustments occur when, for California purposes, you recalculate your federal return from a filing status of single or head of household to married/RDP filing jointly or married/RDP filing separately. SSMC changes result in an increase or decrease to income or deductions. To complete this worksheet:

- Add column A and column B
- Add or subtract column C
- Enter the amount on column D
(column A + column B) \pm column C = column D

Example:

Chris, Taxpayer One, and Pat, Taxpayer Two, each have a capital loss on their separate federal returns, as shown below. Capital losses are limited to \$3,000. When they recalculate their federal return as if married, they will make a \$2,000 filing status adjustment in column C, line 13 of this worksheet. (A \$3,000 loss plus a \$2,000 loss equals a \$5,000 loss; since they are limited to a \$3,000 loss, the adjustment will be \$2,000.)

Part I Income Adjustments Worksheet Section A — Income

13 Capital gain or (loss)

A Taxpayer One	B Taxpayer Two	C Adjustments	D Adjusted Federal Amounts
(\$3,000)	(\$2,000)	\$2,000	(\$3,000)

If Chris and Pat are filing separately, they are each limited to a \$1,500 loss. Therefore, Chris will make a \$1,500 filing status adjustment and Pat will make a \$500 filing status adjustment on their separately filed returns. Because Chris and Pat are filing separately, each one is considered Taxpayer One as shown below.

Part II Income Adjustments Worksheet Section A — Income

13 Capital gain or (loss)

A Taxpayer One	B Taxpayer Two	C Adjustments	D Adjusted Federal Amounts
(\$3,000)		\$1,500	(\$1,500)
A Taxpayer One	B Taxpayer Two	C Adjustments	D Adjusted Federal Amounts
(\$2,000)		\$500	(\$1,500)

Transfer Between Spouses of a Same-Sex Marriage

California conforms to IRC Section 1041, which provides that no gain or loss is recognized on transfers of property between spouses. For federal tax purposes, because federal law does not recognize same-sex marriages, transfers between spouses in a same-sex marriage are not treated as transfers between spouses. However, beginning June 16, 2008, for California tax purposes, because California treats SSMCs the same as spouses, no gain or loss is recognized on transfers of property between spouses in a same-sex marriage. This also applies to transfers between former spouses in a same-sex marriage, if the transfer is related to divorce. For more information on transfers to a spouse, see Property Settlements in federal Publication 504, Divorced or Separated Individuals.

Instructions for Column A, Column B, and Column C

Column A – Taxpayer One Federal Form 1040

Taxpayer One, transfer the amounts from your federal Form 1040, line 7 through line 37 to column A of the worksheet.

Column B – Taxpayer Two Federal Form 1040

For married/RDP filing jointly taxpayer two, transfer the amounts from your federal Form 1040, line 7 through line 37 to column B of the worksheet.

For married/RDP filing separately or former spouse filing single, no amount will be shown in column B. All adjustments for community property will be made in column C.

For more information on community property, see federal Publication 555. SSMCs will use the rules in federal Publication 555 for married people to determine how to apply those rules for California income tax purposes.

Column C – Adjustments

Use column C to make California SSMC adjustments on line 7 through line 21 and line 23 through line 35 following the specific line instructions below. For additional information use the federal Form 1040 instructions. If the amount is less than zero (negative), enter the result in parentheses. For example: (12,345).

Part I Income Adjustment Worksheet

Section A – Income, Columns A, B, and C

Line 7 – Wages, salaries, tips, etc.

Enter the total of your wages, salaries, tips, etc. For most people, the amount to enter on this line should be shown on box 1 of their Forms(s) W-2.

For additional information see the federal Form 1040 instructions for line 7.

Adjustments:

Exclusion for Medical Expenses Reimbursement

California allows an exclusion from gross income for employer-provided accident or health insurance, and medical expense reimbursement for a spouse in a same-sex marriage and the spouse's dependents if they were not previously deducted. Self-employed individuals may also claim a deduction for health insurance costs paid for themselves, their same-sex spouse, and their dependent(s), including the dependent(s) of their same-sex spouse. Enter the amount included in federal income as a negative number on line 7, column C.

Dependent care assistance programs (IRC Section 129)

The amount which may be excluded for dependent care assistance with respect to dependent care services provided during a taxable year shall not exceed \$5,000 (\$2,500 in the case of a separate return filed by a married individual).

For married/RDP filing jointly, if you and your spouse in a same-sex marriage excluded more than \$5,000 on your federal returns, your federal adjusted gross income for California purposes is increased by the amount which exceeds \$5,000. For married/RDP filing separately, if you excluded more than \$2,500 on your federal return, your federal adjusted gross income for California purposes is increased by the amount which exceeds \$2,500.

Line 8 – Taxable Interest

Each payor should send you a Form 1099-INT, Interest Income, or Form 1099-OID, Original Issue Discount. Enter your total taxable interest income on line 8.

For additional information see the federal Form 1040 instructions for line 8a.

Tax-Exempt Interest

If you received any tax-exempt interest, such as from municipal bonds, each payor should send you a Form 1099-INT. Enter the total on line 8.

For additional information see the federal Form 1040 instructions for line 8b.

Line 9a – Ordinary Dividends

Each payer should send you a Form 1099-DIV, Dividends and Distributions. Enter your total ordinary dividends on line 9a.

For additional information see the federal Form 1040 instructions for line 9a.

Line 9b – Qualified Dividends

Enter your total qualified dividends on line 9b.

For additional information see the federal Form 1040 instructions for line 9b.

Line 10 – Taxable refunds, credits, offsets of state and local income taxes

If you received a refund, credit, or offset of state or local income taxes in 2008, you may receive a Form 1099-G, Certain Government Payments.

For additional information see the federal Form 1040 instructions for line 10.

Line 11 – Alimony received

Enter amounts received as alimony or separate maintenance.

For additional information see the federal Form 1040 instructions for line 11.

Adjustment: If you are a former same-sex married individual receiving alimony not included in your federal income, enter the alimony amount on line 11, column C.

Line 12 – Business Income or (loss)

Enter your business income or loss.

For additional information see the federal Form 1040 instructions for line 12.

Adjustments:

Election to treat certain depreciable business assets as an expense (IRC Section 179(b))

You may elect to treat the cost of any IRC Section 179 property as an expense, which is not chargeable to capital account. Any cost so treated shall be allowed as a deduction for the taxable year in which the IRC Section 179 property is placed in service.

If you are filing married/RDP filing separately, your deduction is limited to 50% of the total allowable. Enter 50% of the total deduction as a positive number on line 12, column C.

Election to treat certain reforestation expenditures as an expense (IRC Section 194)

In the case of any qualified timber property with respect to which the taxpayer has made an election, the taxpayer shall treat reforestation expenditures that are paid or incurred during the taxable year with respect to such property as an expense that is not chargeable to capital account. The reforestation expenditures shall be allowed as a deduction. The aggregate amount of reforestation expenditures, with respect to each qualified timber property, shall not exceed \$10,000 (\$5,000 if you file as married/RDP filing separately).

If you claimed a reforestation expense deduction in the amount of \$5,000 on your federal return and you are filing married/RDP filing jointly, enter the difference between your total reforestation expense (up to \$10,000 for each qualified timber property) and the amount you deducted on your federal return on line 12, column C, as a negative number.

Rollover of publicly traded securities gain into specialized small business investment companies (IRC Section 1044)

In the case of the sale or any publicly traded securities with respect to which the taxpayer elects the application of IRC Section 1044, gain from such sale shall be recognized only to the extent that the amount realized on such sale exceeds the cost of any common stock or partnership interest in a specialized small business investment company purchased by the taxpayer during the 60-day period beginning on the date of such sale, reduced by any portion of such cost previously taken into account under this section.

The amount of gain that may be excluded for any taxable year shall not exceed the lesser of \$50,000 (\$25,000 if filing married/RDP filing separately) or \$500,000 (\$250,000 if filing married/RDP filing separately), reduced by the amount of gain excluded for all preceding taxable years. If you are filing married/RDP filing jointly, enter the difference between your single return and your recalculated amounts

(not to exceed the limitations) on line 12, column C, as a negative number.

Line 13 – Capital gain or (loss) (IRC Section 1044(b)(3))

If you had a capital gain or loss, including any capital gain distributions or a capital loss carryover from 2007, you must complete and attach federal Schedule D, Capital Gain or Loss.

For additional information see the federal Form 1040 instructions for line 13.

Adjustment: For California purposes, SSMCs are treated as spouses in provisions where the husband and wife are treated as one person. SSMCs are not treated as one person at the federal level.

If your capital losses are more than your capital gains, you can claim a capital loss deduction. The capital loss deduction for SSMCs who file as married/RDP filing jointly is limited to \$3,000 (\$1,500 if you are filing as married/RDP filing separately).

Line 14 – Other gains or (losses) (IRC Section 121)

If you sold or exchanged assets used in a trade or business, see the Instructions for federal Form 4797, Sale of Business Property.

Adjustment: SSMCs are allowed an exclusion of gain on the sale of their principal residence. SSMCs filing as married/RDP filing jointly are able to exclude up to \$500,000 (\$250,000 if they file as married/RDP filing separately).

If you sold your principal residence and excluded a gain of \$250,000 on your federal return and are filing married/RDP filing jointly, enter the difference between your total gain (up to \$500,000) and the amount you excluded from your federal income on line 14, column C, as a negative number.

Line 15 – Total IRA distributions

Federal law will not treat a same-sex married individual as a spouse in connection with the tax treatment of a tax favored account.

Adjustment: An SSMC may have an adjustment to line 15 if the SSMC has a California-only basis in an IRA, which is recoverable from an IRA distribution. For example, an SSMC may have a California-only basis in an IRA if the spouse is covered by an employer-provided retirement plan. Based on the SSMC's combined adjusted gross income, the available deduction for an IRA contribution may be reduced for California income tax purposes. The amount disallowed for an IRA contribution on this worksheet creates a California-only basis in the IRA. SSMCs must keep track of their California-only basis in order to recover it tax-free from IRA distributions reported on line 15 Total IRA distributions in future years.

Line 15a and Line 15b – Total IRA distributions

You should receive a Form 1099-R, Distribution From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc., showing the amount of any distribution from your IRA. Unless otherwise noted in the line 15a and line 15b instructions, an IRA includes a traditional IRA, Roth IRA, simplified employee pension (SEP) IRA, and a savings incentive match plan for employees (SIMPLE) IRA. Except as provided in the federal Form 1040 instructions for line 15a and line 15b, leave line 15a blank and enter the total distribution on line 15b.

For additional information see the federal Form 1040 instructions for line 15a and line 15b.

Line 16a and Line 16b – Total pensions and annuities

You should receive a Form 1099-R showing the amount of your pension and annuity payments.

For additional information see the federal Form 1040 instructions for line 16a and line 16b.

Line 17 – Rental real estate, royalties, partnerships, S corporations, trust, etc.

Enter the amount from federal Schedule E, Supplemental Income and Loss, line 26 or line 41, here.

Adjustment: Get federal Form 8582, Passive Activity Loss Limitations, if your modified AGI is over \$100,000. If you or your spouse in a same-sex marriage actively participated in a passive rental real estate activity, you can deduct up to \$25,000 of loss from the activity from your nonpassive income. This special allowance is an exception to the general rule disallowing losses in excess of income from passive activities. The maximum amount of the special allowance is reduced if your modified AGI is more than \$100,000 (\$50,000 if you file as married/RDP filing separately).

If you have a loss, subtract the total allowable loss shown on your recalculated federal Form 8582 from the total of the amounts on line 17, column A and column B. Enter the result on line 17, column C, as a positive number.

Line 18 – Farm income or (loss)

Enter the amount from federal Schedule F, Profit or Loss From Farming, line 36 here.

Adjustment: Election to treat certain depreciable business assets as an expense (IRC Section 179(b))

You may elect to treat the cost of any IRC Section 179 property as an expense, which is not chargeable to capital account. Any cost so treated shall be allowed as a deduction for the taxable year in which the IRC Section 179 property is placed in service.

If you are filing as married/RDP filing separately, your deduction is limited to 50% of the total allowable. Enter 50% of the total deduction as a positive number on line 18, column C.

Line 19 – Unemployment compensation

You should receive a Form 1099-G showing the total unemployment compensation paid to you in 2008.

For additional information see the federal Form 1040 instructions for line 19.

Line 20a and Line 20b – Social security benefits

You should receive a Form SSA-1099, Social Security Benefit Statement, showing in box 3 the total social security benefits paid to you.

For additional information see the federal Form 1040 instructions for line 20.

Adjustment: A portion of your benefits may be taxable. How much is taxable depends on the total amount of your benefits and other income. Generally, the higher that total amount, the greater the taxable part of your benefits. To figure the total taxable amount of your social security benefits, calculate the taxable benefit amount using the Social Security Benefits Worksheet found in the federal Form 1040 instructions. Subtract that amount from

the total of the amounts on line 20, combine column A and column B on your California SSMC Adjustments Worksheet. Enter the result on line 20, column C.

Line 21 – Other income

Use line 21 to report any income not reported elsewhere on your return or other schedules.

For additional information see the federal Form 1040 instructions for line 21.

Section B – Adjustments to Income, Columns A, B, and C

Line 23 – Educator expenses

If you were an eligible educator in 2008, you can deduct up to \$250 of qualified expense you paid in 2008. If you and your spouse/RDP are filing jointly and both of you were eligible educators, the maximum deduction is \$500. However, neither spouse/RDP can deduct more than \$250 of his or her qualified expenses. An eligible educator is a kindergarten through grade 12 teacher, instructor, counselor, principal, or aide in a school for at least 900 hours during a school year.

For additional information see federal Form 1040 instructions for line 23.

Line 24 – Certain business expenses of reservists, performing artists, and fee-basis government officials

Include the following deductions on line 24:

- Certain business expenses of National Guard and reserve members who traveled more than 100 miles from home to perform services as a National Guard or reserve member.
- Performing-arts-related expenses.
- Business expenses of fee-basis state or local government officials.

For additional information see the federal Form 1040 instructions for line 24.

Adjustment: Same-sex married individuals may only claim expenses as a performing artist if they file as married/RDP filing jointly, unless they lived apart from their spouse for the entire year.

Line 25 – Health Savings Account (HSA) Deduction

If contributions (other than employer contributions) were made to your HSA for 2008, you may be able to take this deduction. See federal Form 8889, Health Savings Accounts (HSAs), for additional information.

A “tax-favored account” means an individual account, plan, or arrangement that is exempt from tax under federal law, including a HSA. Federal law will not treat a same-sex married individual as a spouse in connection with the tax treatment of a tax favored account.

Line 26 – Moving expenses

If you moved in connection with your job or business or started a new job, you may be able to take this deduction.

For additional information see the federal Form 1040 instructions for line 26.

Line 27 – One-half of self-employment tax

If you were self-employed and owe self-employment tax, use federal Schedule SE, Self Employment Tax, to figure the amount of your deduction.

Line 28 – Self-employed SEP, SIMPLE, and qualified plans

If you were self-employed or a partner, you may be able to take this deduction. See federal Publication 560, Retirement Plans for Small Business (SEP, SIMPLE, and Qualified Plans), or, if you were a minister, see federal Publication 517, Social Security and Other Information for Members of the Clergy and Religious Workers.

Line 29 – Self-employed health insurance deduction

You may be able to deduct the amount you paid for health insurance coverage (established under your business) for yourself, your spouse, your dependents, and your spouse's dependents. Your total California deduction cannot exceed the limitations explained in the federal instructions. Do not include health insurance costs for any month you were eligible to participate in any subsidized health plan maintained by your or your domestic partner's employer.

For additional information see the federal Form 1040 instructions for line 29.

Adjustments:**Self-employed health insurance deduction**

Enter the amount of health insurance coverage for your registered domestic partner and their dependents on line 29, column C, as a positive amount.

Subsidized health plan maintained by your partner's employer

Enter the amount of health insurance cost included for any month you were eligible to participate in any subsidized health plan maintained by your registered domestic partner's employer on line 29, column C, as a negative amount.

Line 30 – Penalty on early withdrawal of savings

The Form 1099-INT or Form 1099-OID you received will show the amount of any penalty you were charged.

Line 31 – Alimony paid

If you made payments to or for your spouse/RDP or former spouse/RDP under a divorce or separation instrument, you may be able to take this deduction. For additional information, see federal Publication 504.

Adjustment: If you are a former same-sex married individual paying alimony not included in your adjustment to income for federal purposes, enter the alimony amount on line 31, column C, as a positive amount.

Line 32 – IRA deduction

If you made contributions to a traditional IRA for 2008, you may be able to take an IRA deduction.

For additional information see the federal Form 1040 instructions for line 32.

Adjustment: If you are in a same-sex marriage and your federal modified AGI exceeds the amounts in the charts below, your IRA deduction will be limited. To figure your adjustment, see federal Form 1040 instructions for line 32. Enter the adjustment amount on line 32, column C, as a positive amount.

A "tax-favored account" means an individual account, plan, or arrangement that is exempt from tax under federal law, including an IRA. Federal law will not treat a same-sex married individual as a spouse in connection with the tax treatment of a tax favored account.

Use the chart below if the spouse in a same-sex marriage that contributed to an IRA was covered by an employer retirement plan.

2008 Filing Status	Federal modified AGI
Married/RDP Filing Jointly or Qualifying Widow(er)	\$85,000 - \$105,000
Single, Head of Household, or Married/RDP filing separately and you did not live with your spouse/RDP for all of 2008	\$53,000 - \$63,000
Married/RDP Filing Separately and you lived with your spouse/RDP at any time in 2008	\$0 - \$10,000

Use the chart below if the spouse in a same-sex marriage that contributed to an IRA was **not** covered by an employer plan, but the other spouse in the same-sex marriage was covered by an employer retirement plan.

2008 Filing Status	Federal modified AGI
Married/RDP Filing Jointly or Qualifying Widow(er)	\$159,000 - \$169,000
Single, Head of Household, or Married/RDP filing separately and you did not live with your spouse/RDP for all of 2008	\$ no phase-out
Married/RDP Filing Separately and you lived with your spouse/RDP at any time in 2008	\$0 - \$10,000

Example:

Chris, Taxpayer One, and Pat, Taxpayer Two, are an SSMC. Chris made an IRA contribution of \$5,000 in 2008. Chris's federal modified AGI is \$80,000, he is not covered by an employer-provided pension plan. On his separate federal return, Chris deducted his entire IRA contribution on line 32 of his Form 1040. Pat is covered by an employer-provided pension plan and he did not make an IRA contribution in 2008. Pat's federal modified AGI is \$150,000. Chris and Pat's combined federal modified AGI exceeds the \$169,000 limitation and they cannot deduct an IRA contribution. When they recalculate their federal modified AGI, as if married, they will make a \$5,000 filing status adjustment in column C, line 32 of this worksheet.

Part I Income Adjustments Worksheet Section B — Adjustments to Income			
Line 32 IRA Deduction			
A. Taxpayer One	B. Taxpayer Two	C. Adjustments	D. Adjusted Federal Amounts
(\$5,000)	\$0	\$5,000	\$0

Line 33 – Student loan interest deduction

Use the Student Loan Interest Deduction Worksheet in the federal Form 1040 instructions to determine your student loan interest deduction.

For additional information see the federal Form 1040 instructions for line 33.

Line 34 – Tuition and fees deduction

Qualified tuition and fees are amounts paid in 2008 for tuition and fees required for the student's enrollment or attendance at an eligible educational institution during 2008. Tuition and fees paid in 2008 for an academic period that begins in the first 3 months of 2009 can also be used in figuring your deduction. Amounts paid include those paid by credit card or with borrowed funds. An eligible educational institution includes most colleges, universities, and certain vocational schools.

For additional information see the federal Form 1040 instructions for line 34.

Line 35 – Domestic production activities deduction

You may be able to deduct up to six percent of your qualified production activities income.

For additional information see the federal Form 1040 instructions for line 35.

Instructions for Column D

Column D – Adjusted Federal Amounts

To calculate column D:

- Add column A and column B
- Add or subtract column C
- Enter the amount in column D
(column A + column B) ± column C = column D

Line 22 – Total

Combine line 7 through line 21 in column D.

Line 36

Add line 23 through 35 in column D.

Line 37 – Total

Subtract line 36, column D from line 22, column D. Enter the amount here and on Form 540, 540A, or 540NR (Long or Short), line 13.

Transfer the amounts from column D, line 7 through line 37 to Schedule CA (540 or 540NR), column A, line 7 through line 37.

- **Home equity indebtedness** – The aggregate amount treated as home equity indebtedness for any period shall not exceed \$100,000 (\$50,000 in the case of a married individual filing a separate return). If your combined home equity indebtedness is over \$100,000 enter the amount of interest on your indebtedness (up to \$100,000) on your recalculated federal Schedule A (Form 1040), line 10 or line 11.

Medical and Dental Expenses

Taxpayer benefits are extended to include the taxpayer's same-sex spouse and their dependent(s) for medical expenses and health insurance benefits.

Combine your medical and dental expenses and apply the 7.5 percent limitation rule to your recalculated jointly adjusted gross income to arrive at the amount for line 4 of the federal Schedule A (Form 1040).

Job Expenses and Certain Miscellaneous Deductions

Combine your job expenses and miscellaneous deductions and apply the two percent limitation rule to your recalculated jointly adjusted gross income to arrive at the amount for line 27 of the federal Schedule A (Form 1040).

Part II Adjustments to Federal Itemized Deductions

Line 38 – Federal itemized deductions

The following adjustments may be required for qualified residence interest (IRC Section 163(h)):

- **Acquisition indebtedness** – The aggregate amount treated as acquisition indebtedness for a period shall not exceed \$1,000,000 (\$500,000 in the case of a married individual filing a separate return). If your combined acquisition indebtedness is over \$1,000,000, enter the amount of interest on your indebtedness (up to \$1,000,000) on your recalculated federal Schedule A (Form 1040), line 10 or line 11.

Definitions

Marriage – A legal union of two persons.

Married – United in a legally recognized marriage.

Spouse – A married person or a person who is part of a lawful marriage.

Former spouse – A former married person or a person who was previously part of a legal marriage.

Registered Domestic Partnership (RDP) – Two persons who filed a Declaration of Domestic Partnership with the California Secretary of State.

Married/RDP Filing Jointly Filing Status – A filing status for married couples who were married as of the last day of the tax year. Beginning in 2007, this filing status may also be used by RDPs who have registered as domestic partners with the California Secretary of State by the last day of the tax year.

Married/RDP Filing Separately Filing Status – A filing status for married couples and RDPs who choose to report their respective incomes, exemptions, and deductions on separate tax returns.

Divorce – The legal termination of a marriage.

Unmarried/Not in a Registered Domestic Partnership – A taxpayer is unmarried and not in a registered domestic partnership if on the last day of the tax year, one of the following applies:

- The taxpayer has never been married and never entered into a registered domestic partnership.
- The taxpayer is legally divorced from his or her spouse/RDP under a final decree of divorce, a final decree of dissolution of RDP, or the taxpayer filed a Notice of Termination of Domestic Partnership with the Secretary of State and the six-month waiting period for the notice to become final has passed. A petition for divorce or dissolution of RDP is **not** the same as a final decree. A married taxpayer remains married or an RDP until the final decree is issued.
- The taxpayer is legally separated from his or her spouse/RDP under a final decree of legal separation. A petition for legal separation or an informal separation agreement is **not** the same as a final decree of legal separation. Also, simply living apart from a spouse/RDP is **not** the same as being legally separated under a final decree of legal separation.

A married/RDP taxpayer is unmarried or not in an RDP for head of household purposes if the taxpayer's spouse/RDP was a nonresident alien at any time during the year. However, if the taxpayer filed a joint return in a previous year by choosing to treat the spouse/RDP as a resident, the choice continues in subsequent tax years until it is revoked. If the taxpayer has not revoked the choice by the extended due date for filing a return in the current year, the nonresident alien spouse/RDP is still a resident for tax purposes in the current year and the taxpayer remains married or an RDP.

Considered Unmarried (Head of Household) – To qualify for head of household filing status, a married taxpayer or RDP must meet the requirements to be considered unmarried or considered not in a registered domestic partnership. One of those requirements is that the taxpayer's spouse or RDP must not have lived in the home at any time during the last six months of the tax year.

Decree of Dissolution – The Final Judgment of Divorce (also referred to as a Decree of Dissolution or Decree of Divorce); the court order that terminates a marriage and certain registered domestic partnerships. The marriage or registered domestic partnership is not officially terminated until a final decree is issued by the court.

Legal separation – To be legally separated, a person must have received a final decree of legal separation issued by a court. A petition for legal separation, an informal separation agreement, or simply living apart from a spouse/RDP is not the same as being legally separated under a final decree of legal separation.

Termination/Dissolution of RDP – Depending on the circumstances, registered domestic partnerships may be terminated either by court order following a dissolution proceeding in the Superior Court or by filing a Notice of Termination of Domestic Partnership with the California Secretary of State.

Additional Information

How to Get California Tax Information

By Internet – You can download, view, and print California tax forms and publications from our website at ftb.ca.gov.

By phone – To order California tax forms, call our toll-free number 800.338.0505.

In person – Many libraries and post offices provide free California tax booklets during the filing season.

Employees at libraries and post offices cannot provide tax information or assistance.

By mail – We will send you two copies of each tax form and one copy of each set of instructions. Allow two weeks to receive your order. If you live outside California, allow three weeks to receive your order. Write to:

TAX FORMS REQUEST UNIT
FRANCHISE TAX BOARD
PO BOX 307
RANCHO CORDOVA CA 95741-0307

Letters

If you write to us, be sure your letter includes your social security number (SSN) or Individual Taxpayer Identification Number (ITIN), and your daytime and evening telephone numbers. Send your letter to:

FRANCHISE TAX BOARD
PO BOX 942840
SACRAMENTO CA 94240-0040

We will respond to your letter within ten weeks. In some cases, we may need to call you for additional information.

Volunteer Income Tax Assistance (VITA)

At more than 1,500 sites throughout California, trained volunteers provide free assistance to low-income, senior, disabled, and non-English speaking persons who need to file simple federal and state income tax returns. Many military bases also provide this service for members of the armed forces.

The locations for VITA will be listed on our website at ftb.ca.gov from mid-January 2009, through April 15, 2009, or call the Franchise Tax Board at 800.852.5711 to find the volunteer assistance location nearest you.

General Toll-Free Phone Service

Telephone assistance is available year-round from 7 a.m. until 6 p.m. Monday through Friday, except holidays.

From within the United States. 800.852.5711
From outside the United States (not toll-free). . 916.845.6500

For federal tax questions, call the IRS at 800.829.1040

Assistance for persons with disabilities

We comply with the Americans with Disabilities Act. Persons with hearing or speech impairments please call TTY/TDD 800.822.6268.

Asistencia bilingüe en español

Asistencia telefónica esta disponible todo el año durante las 7 a.m. y las 6 p.m. lunes a viernes, excepto días festivos.

Dentro de los Estados Unidos, llame al 800.852.5711

Fuera de los Estados Unidos, llame al
(cargos aplican) 916.845.6500

Asistencia para personas discapacitadas: Nosotros estamos en conformidad con el Acta de Americanos Discapacitados. Personas con problemas auditivos, pueden llamar al TTY/TTD 800.822.6268.

Sitio web. ftb.ca.gov